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May14, 2008

Via ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th St, SW
Washington, DC 20554

Re: *Ex Parte* Presentation: WC Docket No. 07-135

Dear Ms. Dortch:

Northern Valley Communications, LLC ("Northern Valley") and Sancom Inc., ("Sancom") through their undersigned counsel, hereby respond to the *ex parte* notice filed by Verzion dated March 14, 2008, April 25, 2008 and April 28, 2008, which implicate Northern Valley and Sancom as CLECs involved in so-called "traffic pumping activity."

Over the last several months Verizon has filed three sets of slides in this docket, all of which are utterly bereft of information, purporting to show "Traffic Volume by ILEC and CLEC Traffic Pumpers 2007-YTD in Millions of MOU."[1] The slides proffered by Verizon as evidence of "traffic pumping" have no probative value in this proceeding because they are nothing more than colorful bar graphs; there is absolutely no underlying data supplied in Verizon's presentations. Northern Valley and Sancom, along with other rural CLECs, have been on the receiving end of an endless string of vitriol spewed by Verizon. In addition to their name-calling and baseless accusations of "illegal" activity, Verizon, along with some wireless companies, have conspired to sully the reputations of rural CLECs before this Commission and have undertaken a gambit of self-help in an effort to starve rural carriers, like Northern Valley and Sancom, out of existence by attacking perfectly legal and desired services provided by rural carriers (as well as by Verizon itself). As explained below, Northern Valley and Sancom hereby request the Commission's immediate help in the form of a Declaratory Ruling that reiterates the Commission's numerous past rulings stating that non-payment of lawfully tariffed access charges violates the Communications Act and violates the Commission's long-standing rules, not to mention, violates the public interest.

1 *See* Verizon *ex parte* filings in WC Docket 07-135 dated Feb. 27, 2008; March 14, 2008; April 23, 2008; April 25, 2008 and April 28, 2008.

I. Exercise of Self-Help By Verizon And Other IXCs Is Detrimental To The Public Interest And It Significantly Impedes The Ability of Northern Valley And Sancom To Continue To Provide Reliable And Affordable Enhanced Telecommunications Services To The Communities They Serve

Northern Valley prides itself on its ability to bring state-of-the-art telecommunications, Internet and video services to the Aberdeen and Redfield, South Dakota, phone exchanges and to return quality local customer service to the area. By offering advanced technologies through local customer service, Northern Valley plays a key role in the enhancement of economic development in its trade area, significantly adds to the quality of life of its customers, and keeps them connected to an ever increasing global community. Northern Valley is constructing a new fiber optic and copper telecommunications network to deliver next generation technology and services. The Aberdeen Development Corporation and Chamber of Commerce seek to make Aberdeen a telecommunications hub that will attract telecommunications or information age businesses and promote economic development in rural areas. Northern Valley's modern telecommunications network assists in these goals. With its expanding network, Northern Valley provides enhanced services to customers in Northeastern South Dakota at competitive rates.

Similarly, Sancom is a small rural carrier, based in Mitchell, South Dakota, deeply committed to providing reliable and affordable enhanced services to its customers to keep them connected and engaged in the national and international economy. Sancom has greatly improved the communications network in Mitchell by completely overbuilding the town with fiber-optic cable. Sancom invests considerable funds in network improvements so that its rural customers have access to the same enhanced services as their urban counterparts.

By providing comparable and competitive networks, Northern Valley and Sancom ensure that their customers can maximize business opportunities through increased bandwidths, switching capacities and services. Customers can make and receive more calls due to Northern Valley and Sancom's commitment to providing their customers with a high-quality services. Together these two small carriers have invested tens of millions of dollars in rural areas of South Dakota.

Northern Valley and Sancom provide originating and terminating access services ("access services") to Verizon and dozens of other interexchange ("IXC") carriers on an equal and non-discriminatory basis in accordance with their lawful tariffs, which have been approved by this Commission and the South Dakota Public Utilities Commission. Pursuant to their valid tariffs, Northern Valley and Sancom assess access charges on those IXCs, like Verizon, who use Northern Valley and Sancom's networks to take calls from, or deliver calls to, customers who are located within the rural CLECs' local service areas. However, for over a year Verizon and the other major IXCs have engaged in illegal self-help and have refused to pay the valid invoices issued by Northern Valley and Sancom for the access services rendered, as they attempt to essentially starve rural CLECs out of business. The overdue payments due to both Northern Valley and Sancom respectively represent millions of dollars now owed by Verizon to each company. While a million dollars is a rounding error to a company like Verizon, whose quarterly revenues are over $20 billion, it is a colossal sum to a rural CLEC trying to keep pace in an ever-evolving and convergent global communications world. These unpaid and undisputed invoices materially decrease the ability of Northern Valley and Sancom to continue to invest in their networks and to continue to provide the high quality services that their rural customers have come to depend upon for their livelihoods.

Rural CLECs, such as Northern Valley and Sancom, are gravely harmed by the unilateral self-help undertaken by Verizon. Verizon's filings in this docket reiterate the same unsupported arguments they have been making to the Commission for over a year: that rural CLECs that have initiated conference calling services are increasing their terminating traffic in ways that Verizon maintains (in the face of Commission precedent to the contrary) are somehow illegal. However, Verizon and the other IXCs glaringly omit from their advocacy any mention of the self-help they have undertaken against Northern Valley and Sancom. While Verizon, in federal litigation against Northern Valley and Sancom, attempts to attack the validity of the tariffs governing the traffic they terminate to Northern Valley and Sancom, Verizon does not dispute that they have been billed the correct rates for the correct number of minutes by Northern Valley and Sancom. They only vaguely assert here that the traffic terminated is somehow not "legitimate" traffic.

Verizon regularly has used self-help refusals to pay access charges as a tactic to bully smaller carriers and competitors and its unlawful conduct continues to this day. This Commission, and state regulatory commissions, have repeatedly found that self-help refusals to pay access charges are unlawful, and in the case of interstate charges, such conduct violates the Communications Act.[2] It is well past time for the Commission to put a stop to this unlawful conduct, and prevent Verizon and other large carriers from engaging in this blatant form of regulatory arbitrage, which ultimately harms rural consumers and communities.

II. "Traffic Pumping" Is Term Fabricated By "Traffic Dumpers" Like Verizon And The Commission Has Found That Calls to Conference Calling Companies Are Compensable Under the Commission's Access Charge Regime

To justify their self-help refusals to pay access charges, Verizon and its brethren have invented and repeatedly used the term "traffic pumping" in their advocacy before the Commission, and elsewhere. However, a search of the Commission precedent reveals that no such term exists. That is because "traffic pumping" is a completely fabricated term. Clearly, this term has been used by Verizon, and other carriers, solely to create a negative perception regarding an increase in the use of certain calling services by Verizon's subscribers. If Northern Valley and Sancom are so-called "traffic pumpers" then Verizon and the other IXCs and wireless companies who have millions of dollars of unpaid invoices should properly be classified as "traffic dumpers"—carriers who dump traffic on the network and obtain the benefit of other

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2 *See MGC Communications, Inc. v. AT&T Corp.* 14 FCC Rcd 11647 (1999); *Comunique Telecomms., Inc. Declaratory Ruling and Order*, 10 FCC Rcd 10399, 10405 (1995); *Business WATS, Inc. v. AT&T Corp.*, 7 FCC Rcd 7942 (1992).

carriers' network termination services while refusing to pay for it. Indeed, on October 2, 2007 the Commission issued a ruling that pertains to the bogus classification that Verizon seeks to apply to phone calls made to customers of rural CLECs that provide conference calling services, and which are terminated by Northern Valley and Sancom.[3] The Commission found that calls to conference calling companies are in fact compensable under the Commission's access charge regime.[4] CLECs do in fact "terminate the [conference call] traffic at issue," just like any other "end user."[5] Further, the business and marketing arrangements entered into by CLECs and conferencing service providers does not change their status as customers, and thus end-users.[6] Therefore, the CLECs tariffs "allow [Northern Valley and Sancom] to charge terminating access charges for calls terminated to the conference calling companies," and this lawful action is not "traffic pumping"— whatever that means — as claimed by "traffic dumper," Verizon.[7]

III. Statistical Data Supports Northern Valley and Sancom's Position That Traffic Dumper Verizon's Self-Help Tactics Are Harmful To The Public Interest

Traffic dumping interexchange giants, like Verizon, generate enormous toll revenues annually. In fact, in 2004, the latest year for which the Commission provides data, Verizon's toll revenue was approximately $ 11.6 billion.[8] The average per minute long distance rate paid by residential and business customers in 2004 was $.06 per minute.[9] When you divide Verizon's 2004 toll revenues by the 2004 average per minute long distance rate, Verizon had a total of 193.4 billion toll minutes in 2004. Further, from November 2006-August 2007, Verizon experienced a 42 million minute increase in termination access it routed (but did not necessarily pay) to CLECs.[10] This increase of minutes derives an annual revenue increase to Verizon of over $30 million and a microscopic .02% increase in Verizon's monthly toll minutes of use. This miniscule increase in minutes is statistically irrelevant, regarding underlying intercarrier compensation costs, when determining geographically averaged rates for consumers. Furthermore, this increase in minutes is the result of a coherent choice by consumers to make and place calls *that they pay for*.

As if there were any doubt, these statistics confirm that Verizon is a telecommunications behemoth, generating billions of dollars and dumping millions of minutes of

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3 *See Qwest Communications Corp. v. Farmers and Merchants Mut. Tel. Co.* EB-07-MD-001, Memorandum Opinion and Order (Oct. 2, 2007) ("*Qwest Order*").

4 *Id.* at ¶ 30.

5 *Id.* at ¶¶ 30, 35 (finding that "conference calling companies *are* end users as defined in the tariff").

6 *Id.* at ¶ 38.

7 *Id.*

8 Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Statistics of Communications Common Carriers*, at 3-5, available at http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-262086A1.pdf.

9 *See* Federal Communications Commission, Common Carrier Bureau, *Reference Book of Rates, Price Indices and Household Expenditures for Telephone Service*, available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/ref97.pdf.

10 *See* Letter from Verizon to Federal Communications Commission Re: Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135 (September 24, 2007).

traffic to CLECs and other carriers for which it refuses to pay. In fact, Verizon's revenues are over $90 billion a year.[11] The mere fact that minutes of use terminated by Verizon to Northern Valley and Sancom have steadily increased illustrates only that consumers are actively participating in all sorts of economic activity and are connecting with individuals and business entities outside their locality. Access charges help defray the costs of maintaining the networks so that rural consumers, like those served by Northern Valley and Sancom, can continue to engage meaningfully in the national economy. Verizon itself continues to profit handsomely from the usage undertaken by its subscribers, as illustrated above. The Commission should act immediately to put an end to the unilateral self-help dealings of traffic dumping IXC's, like Verizon, that harm the public interest and stifle competition.

Respectfully submitted,

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[11] See "Verizon Caps Successful Year With Strong 4Q Results" available at http://newscenter.verizon.com/press-releases/verizon/2008/verizon-caps-successful-year.htm (Jan. 28, 2008).